

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

ROCKY BRANDS, INC.

and

LEHIGH SAFETY SHOE CO. LLC

Plaintiffs,

V.

RED WING SHOE COMPANY, INC.,

and

**RED WING BRANDS OF AMERICA,
INC.**

Defendants.

Judge Watson

Magistrate Judge King

Case No. C2 06 275

JURY DEMAND ENDORSED HEREON

**FIRST AMENDED COMPLAINT FOR MONETARY DAMAGES AND
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

Plaintiff Rocky Brands, Inc. and Plaintiff Lehigh Safety Shoe Co. LLC (collectively “Rocky”), by and through undersigned counsel, for their Complaint against Defendant Red Wing Shoe Company, Inc. and Defendant Red Wing Brands of America, Inc. (collectively, “Red Wing” or “Defendants”), states as follows:

1. This is an action for false advertising and false designation of origin in commercial advertising or promotion under the Lanham Act, 15 U.S.C. § 1125(a), and tortious interference with Rocky's prospective business advantages and expectancies under Ohio law, and deceptive trade practices, all arising from Red Wing's improper and deceptive marketing and false promotion of Red Wing's footwear brands, including the "Red Wing," "Worx," and "Irish Setter" brands and other footwear brands.

PARTIES

2. Plaintiff Rocky Brands, Inc. is an Ohio corporation with its principal place of business at 39 E. Canal Street, Nelsonville, Ohio. Rocky manufactures, markets and sells premium quality hunting boots and work boots as well as branded apparel and accessories. Rocky markets and sells its products nationwide, including in Ohio, through more than 3000 retail distributors, company-owned retail channels, the internet, catalogues, and other means.

3. Plaintiff Lehigh Safety Shoe Co. LLC is a limited liability company organized under the laws of the State of Delaware with its principal place of business at 39 E. Canal Street, Nelsonville, Ohio. Lehigh manufactures, markets and sells premium quality work and safety boots and shoes and related accessories. Lehigh markets and sells its products nationwide, including in Ohio, through shoemobiles, service centers, retail distributors, company-owned retail channels, the internet, catalogues, and other means.

4. Defendant Red Wing Shoe Company, Inc. (“Red Wing Shoes”) is a Minnesota corporation with its principal place of business at 314 Main Street, Red Wing, Minnesota. Red Wing Shoes manufactures, markets, and sells premium quality hunting boots, work boots and accessories. Red Wing Shoes markets and sells its products nationwide, including in Ohio, through retail distributors, company-owned and franchised stores, the internet, catalogues, and via other means.

5. Defendant Red Wing Brands of America, Inc. (“Red Wing Brands”) is a Minnesota corporation with its principal place of business at 314 Main Street, Red Wing, Minnesota. Red Wing Brands is a wholly-owned subsidiary of Red Wing Shoes. Red Wing Brands markets, sells and/or distributes footwear manufactured by or for Red Wing Shoes.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331-32 and has supplemental jurisdiction over Rocky's state law claim pursuant to 28 U.S.C. § 1367. The amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Personal jurisdiction in the Southern District of Ohio is proper inasmuch as Defendants regularly solicit and conduct business, and own and operate retail establishments, within the Southern District of Ohio.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (b) and (c) because Defendants transact business and are found within the Southern District of Ohio and a substantial portion of the events pertinent to the claim hereunder occurred within this district.

FACTUAL ALLEGATIONS

Red Wing's various brands

8. Red Wing markets, advertises, and promote Red Wing footwear on a national level as "all American-made" and often specifically use the phrases "Made in USA" or "Made in America" or images of the American flag in advertising and in store windows.

9. Red Wing markets and sells several different brands of shoes and work boots in the United States, including the "Red Wing," "Worx," and "Irish Setter" lines of footwear.

10. Upon information and belief, all or virtually all of the significant parts of the Red Wing, Worx, and Irish Setter brands of footwear are manufactured and/or assembled in China or otherwise outside the United States.

Red Wing retail sales and marketing

11. Red Wing's products are sold in over 4,000 retail stores, including 406 dedicated Red Wing Shoe Stores. Upon information and belief, Red Wing Brands owns 153 of the 406 dedicated Red Wing stores, while the remainder operate under an agreement to employ

Red Wing's marketing strategies and distribution methods, including the promotion of an "all American-made" reputation for Red Wing and its footwear brands.

12. Among the marketing and advertising techniques employed by Red Wing is the use of large posters and signs which generally display the words "Made in the USA" or similar language, or images of the American flag, in connection with all of its products.

13. Red Wing stores are decorated with these posters and signs in both front windows and the interior. The signs are not affixed to or associated with any particular boot or box but are either affixed on the store windows, incorporated into store signs, or generally displayed inside the stores.

14. One example of such advertisement by Red Wing is found in the front window of the Red Wing shoe store located at 227 East Home Street in Springfield, Ohio, which features a large poster that reads: "Red Wing Shoes, Made in America since 1905."

15. The front window of the East Home Street store also features a prominent display relating to Red Wing's imported "Worx" brand which simulates a construction barrier and features the "Red Wing" logo with the words "Made in the USA."

16. Another example of such advertisement by Red Wing is found in the Red Wing shoe store located at 6455 Chambersburg Road in Huber Heights, Ohio where the front store window is decorated with a large poster that reads "Made in the USA." The poster does not limit the "Made in the USA" claim to any particular brand.

17. The Chambersburg Road store in Huber Heights also displays several small American flags throughout the store in close proximity to Red Wing's imported "Irish Setter" brand display.

18. Another example of such advertisement by Red Wing can be found at the “Boot Shop” located at 87 Main Street in Logan, Ohio, where there is a clock and a large door mat that both feature the Red Wing logo and the words “Made in the USA.” The imported “Worx” and “Irish Setter” Red Wing lines are displayed and sold in this store.

19. Another example of such advertisement by Red Wing is found at the L&N clothing sales store in Uhrichsville, Ohio where a prominent Red Wing sign is displayed on the outside of the store that suggests that all Red Wing footwear is made in the United States. This sign includes a logo for the imported Irish Setter brand in close proximity to the Red Wing brand logo, as well as an American flag suggesting that both brands are entirely made in the United States.

20. Another example of such advertisement by Red Wing is found in the Red Wing shoe store located in Chesapeake, Virginia, where the logo for the imported footwear line “Worx” is followed by the words “by Red Wing Shoes.” At other places in the same store the Red Wing logo is followed by a U.S. origin claim.

21. Another example of such advertisement by Red Wing was included in an announcement for a recent store opening in Frederick, Maryland. This announcement reads, “[t]he company has its own tannery for leathers and all the Red Wing brand shoes are made in the U.S.” This statement is followed by a listing of the Red Wing products, including the imported Irish Setter boots and Worx boots.

Third-party publications evidencing and contributing to consumer confusion

22. In addition to the “all American-made” promotion which occurs at Red Wing stores and in advertising and promotional materials apparently provided by Red Wing to other

retailers, at least two web sites explicitly promote Red Wing products solely because they purport to be manufactured domestically.

23. Although the owners of these web sites are third-party consumer groups, they promote American manufacturing companies by urging consumers to select American-made products. As a result of Red Wing's marketing and promotional techniques, these web sites perpetuate and spread the misconception that all Red Wing footwear is made in America. To date, Red Wing has done nothing to alleviate the confusion and deception caused by these web sites, nor to clarify which of its brands are not in fact "Made in the USA."

24. One of the web sites that promotes Red Wing's footwear is the "Purchase American" site located at www.purchaseamerican.com. This site seeks to "preserve the American way of life for future generations" by urging those who view their site to "buy American," and also provides a series of links for products that are manufactured domestically.

25. The Purchase American web site states that "[a]ll Red Wing Boots and Shoes, branded with the Red Wing shoe logo, are made in the USA." This site goes on to state that Red Wing "also makes other branded shoes and boots that are made overseas," but advises consumers to "look for the Red Wing logo at your better shoe stores," suggesting that the Red Wing name and logo are synonymous with American-made products.

26. A similar web site, "Made in USA" located at www.madeinusa.org, also promotes American-made products. The Made in USA web site urges consumers to buy products made in the USA to ensure that "jobs are kept in the United States" and "benefit[] both workers and corporations, instilling a pride in the U.S. citizens about our economy and our manufacturing processes." This web site features a search engine to search its database of "All

Made in USA and American Made” products, and lists Red Wing Shoes as a manufacturer of work boots made in the USA.

27. In addition to these web sites, certain retailers of hunting and work apparel distribute both Rocky and Red Wing products via catalogues and web sites. The catalogues and web sites explicitly associate the Red Wing name with its imported “Worx” line as “Worx by Red Wing Shoes.” This combination of the Worx name with the Red Wing name occurs not only in the advertisements but in the actual Worx logo. The catalogues and web sites also include Irish Setter advertisements which contain the attribution that Irish Setter is a “division of Red Wing Shoes Company, Inc.” These catalogues and web sites are available to, and received or accessed by, millions of consumers nationwide.

Red Wing’s own web site

28. Despite the fact that several of its footwear brands are actually manufactured in China, and therefore do not qualify for a “Made in USA” designation, Red Wing’s official web site clearly promotes its name as synonymous with “Made in the USA” by actively promoting its all-American image depicting American workers making boots at the factory in Minnesota, and using other indicia to suggest its footwear has U.S. origin.

29. Red Wing’s web site also contains Volume 4 of “Retail News,” in which Red Wing discusses its new Worx logo that incorporates the words “Made by Red Wing” and states that this new logo was adopted to reflect “the closer association with Worx and Red Wing Brands.”

30. Red Wing’s web site also includes “Internet Policy” letters distributed to its stores explicitly associating the Red Wing brand name, which Red Wing associates with all American-made products, with the imported Worx and Irish Setter brands and logos.

FIRST CAUSE OF ACTION
False Advertising and False Designation of Origin in Commercial
Advertising or Promotion

31. Rocky incorporates by reference herein the allegations contained in paragraphs 1 through 30 above.

32. Red Wing's marketing strategy for Red Wing, Worx, and Irish Setter lines of footwear is false and intentionally deceives and misleads consumers to believe that all of its footwear is made in the United States.

33. Red Wing's use of advertisements including posters, signs, and web sites perpetuates Red Wing's false and misleading marketing strategy and leaves consumers with the mistaken impression that all of Red Wing's products are in fact made in the United States.

34. By placing posters and signs which include the designation "Made in USA" or "Made in America" in store fronts and inside its retail stores, Red Wing is misleading the reasonable consumer to believe that all Red Wing footwear sold in these stores, including the imported Red Wing, Worx, and Irish Setter brands, are made in the USA.

35. By using the American flag in connection with these posters and signs promoting Red Wing footwear which read "Made in USA" or "Made in America," the reasonable consumer is deceived and falsely misled into believing that all Red Wing footwear is made in the United States, including the Red Wing, Worx, Irish Setter, and other brands that are entirely or substantially manufactured and/or assembled abroad.

36. Red Wing's deceptive and misleading activities involving their use of the "all American-made" or "Made in the USA" statements are material and are likely to influence consumers' purchasing decisions. In a Consumer Alert published by the FTC, the alert stated

that "...[N]ews reports suggest that more American consumers are seeking out products that are "Made in the USA" with the expectation that the claim is truthful and accurate."

37. Red Wing's advertisements in third-party catalogues and web sites are also false and mislead consumers by intentionally promoting a false and deceptive inference that all of Red Wing's footwear brands are made in the United States.

38. Rocky and Red Wing are direct competitors. Rocky and Red Wing offer identical products, in overlapping geographic territories, using overlapping and identical marketing and trade channels, all of which are targeted to the exact same consumers.

39. Rocky has been injured, and will continue to be injured, by Red Wing's intentional and deceptive conduct. Rocky has experienced a loss in both sales and customers directly attributable to Red Wing's false, deceptive and misleading advertising activities.

40. Red Wing's web site is also false and misleading in that it reveals a concerted effort on Red Wing's part to transfer Red Wing's alleged domestic-made reputation onto the imported Worx and Irish Setter brands in particular. Red Wing has falsely misled consumers to believe that all of its footwear is entirely made in the United States.

41. The foregoing acts and conduct by Red Wing constitute false advertising and false designation of origin in connection with products distributed in interstate commerce, in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

42. Red Wing's actions, as set forth above, are negligent, willful, reckless and/or intentional, and have caused and threaten to cause irreparable injury to Rocky's goodwill, reputation, and ability to conduct business. The injury to Rocky is and continues to be ongoing and irreparable. An award of monetary damages alone cannot fully compensate Rocky for its injuries and Rocky lacks an adequate remedy at law.

43. Rocky is entitled to a preliminary and permanent injunction against Defendants, as well as all other remedies available under the Lanham Act, including, but not limited to, compensatory damages, treble damages, costs, and attorneys' fees.

SECOND CAUSE OF ACTION
Tortious Interference With Business Relationships

44. Rocky incorporates by reference herein the allegations contained in paragraphs 1 through 43 above.

45. Rocky has a business relationship or potential business relationship with all consumers who purchase premium quality hunting boots and work boots, branded apparel, and accessories. Red Wing is aware of Rocky's business relationships and potential business relationships because it directly competes with Rocky for the same business relationships.

46. Red Wing has engaged in improper and fraudulent conduct by placing or causing to be placed posters and signs which include the designation "Made in USA" or "Made in America" in store fronts and inside retail stores, and by providing similar promotional materials to other third-party retailers, misleading the reasonable consumer to believe that all Red Wing footwear sold in these stores, including the imported Red Wing, Worx, and Irish Setter brands, is made in the USA.

47. Red Wing's false and deceptive activities are negligent, willful, reckless and/or intentional and constitute improper, tortious interference with Rocky's business relationships and potential business relationships with its customers and potential customers.

48. As a direct and proximate result of Red Wing's improper interference conduct, Rocky has sustained damages and will continue to sustain ongoing damages unless such conduct is enjoined.

THIRD CAUSE OF ACTION
Deceptive Trade Practices

49. Rocky incorporates by reference herein the allegations contained in paragraphs 1 through 48 above.

50. Red Wing uses deceptive representations or designations of geographic origin in connection with the sale of its goods, and pursuant to R.C. § 4165.02(A)(4) Red Wing therefore is engaging in deceptive trade practices.

51. As a direct and proximate result of Red Wing's deceptive trade practices, Rocky has sustained damages and will continue to sustain ongoing damages unless such conduct is enjoined.

WHEREFORE, Plaintiffs pray for judgment against Defendants, as follows:

(1) that Red Wing Shoes, Red Wing Brands, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them be preliminarily and permanently enjoined from:

- (a) directly or indirectly advertising and promoting any brand of Red Wing footwear as "Made in USA" or "Made in America," or using either of these designations or other similar indicia in connection with its products, in its retail stores and franchises, in third-party retail catalogues, stores, or web sites, and on the Red Wing web site;
- (b) directly or indirectly advertising and promoting the imported Red Wing, Worx, and Irish Setter lines of footwear, in combination with other lines of footwear or a "Made in USA" or "Made in

America” designation, to suggest that the imported brands are actually made in the United States, in its retail stores and franchises, in third-party retail catalogues, stores, or web sites, and on the Red Wing web site;

(2) that Red Wing Shoes and Red Wing Brands be directed to file with this court and serve upon Plaintiffs within thirty days after service of the permanent injunction a report in writing under oath, setting forth in detail the manner and form in which Red Wing Shoes and Red Wing Brands have complied with the permanent injunction, as well as a plan for the publication of corrective advertising;

(3) that Plaintiffs recover their actual damages sustained as a result of Red Wing Shoes and Red Wing Brands’s wrongful actions;

(4) that Plaintiffs recover Red Wing Shoes and Red Wing Brands’s profits made as a result of their wrongful actions;

(5) that Plaintiffs recover three times Red Wing Shoes and Red Wing Brands’s profits made as a result of their wrongful actions or three times Plaintiffs’ damages, whichever is greater;

(6) that this case be deemed an exceptional case under 15 U.S.C. 1117(a);

(7) that Plaintiffs be awarded exemplary damages for Red Wing Shoes and Red Wing Brands’s willful and intentional acts;

(8) that Plaintiffs recover their costs and attorneys’ fees; and

(9) that Plaintiffs recover such further relief to which it may be entitled.

Dated: October 19, 2006

Respectfully submitted,
/s/Joseph W. Ryan, Jr. by

Julie L. Atchison

Joseph W. Ryan, Jr. (0023050)

Trial Attorney

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JURY DEMAND

Plaintiff Rocky Brands, Inc. demands a trial by jury on all claims asserted herein.

/s/Joseph W. Ryan, Jr. by

Julie L. Atchison

Joseph W. Ryan, Jr.

CERTIFICATE OF SERVICE

A copy of the foregoing was sent via the Court's electronic filing system, this 19th day of October, 2006, and service was made under this Court's electronic filing system upon the following:

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/s/Julie L. Atchison

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